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BOOK REVIEWS.

THE WORLD'S LEGAL PHILOSOPHIES. By Fritz Berolzheimer, President of the International Society of Legal and Economic Philosophy at Berlin. Translated from the German by Rachel Szold Jastrow, of Madison, Wisconsin. With an Introduction by Sir John Macdonell, Professor of Comparative Law in University College, London, and by Albert Kocourek, Lecturer on Jurisprudence in Northwestern University. Boston: The Boston Book Company, 1912, pp. lv., 490.

This is the second volume of The Modern Legal Philosophy Series. The volumes previously published have been reviewed in earlier issues of this Review (cf. 8 MICH. L. REV. 351 and 10 MICH. L. REV. 663). There are helpful introductions by an English and an American jurist and the author furnishes a valuable preface and a special introduction written for the American edition of this work which has already appeared in Germany as the second volume of the author's "System der Rechts—und Wirthschaft philosophie."

The author proposes to give an account of the "successive cultural stages of the philosophy of law in terms of their distinctive ideas, principles, conceptions and doctrines and of their practical issues and demands." The culture referred to here is evidently "*Kultur*" as defined by Small in his General Sociology, 58-60 (quoted by Pound in 25 HARV. L. REV. 157). "It is a condition or achievement possessed by society * * * a social possession, different from the individual state, which consists in adaptation in thought and action to the conditions of life." It differs from civilization in that the latter is the control of the "elementary human impulses by society" while culture is the "control of nature by science and art."

In the furtherance of his purpose the author, with characteristic German *Gruendlichkeit*, begins with an account of the legal and economic institutions of Egypt, Assyria, India, Judea and Phoenicia, by way of introduction to the Græco-Roman legal philosophy. His account of the contribution of the Greeks to the subject is a most lucid and succinct history of Greek philosophy from Pythagoras to the Neo-Platonists, with special reference to legal institutions. He then discusses the moralization of Roman law brought about by the introduction of the philosophy of law through Cicero, and by the influence of Christian ethics. Under the theme of the bondage of mediævalism he considers the philosophic aspects of the spiritual dominance of Rome and the economic and social restrictions of the period, with a description of the more liberal trends of the middle ages, leading up to and culminating in the civic emancipation of the reformation period. From the Reformation to modern times the unifying philosophic concept is the rise and decline of "natural law." The chapter on this theme begins with Grotius, Hobbes and Pufendorf and brings us down to recent systems of philosophy. The sections on the great Germans: Kant, Fichte, Schopenhauer, Schelling and Hegel are the most enlightening discussions of the philosophies of these

great masters that the reviewer has met and so clearly put that even the lay reader begins to congratulate himself that it may be possible sometime for him to know what Kant meant by the "*Ding in sich*," or Schelling by the "organic unity of subject and object" or Hegel by "absolute, subjectless, universal reason"; or, at least, to assure himself that they have a meaning. The course of emancipation of the proletariat is shown in the author's account of French communism, German socialism and anarchism, and the last chapter gives a sociological reconstruction of legal philosophy. The most interesting section in this chapter is the one on the reinstatement of Kant and Hegel in which the author gives an account of the doctrines of his own school, the Neo-Hegelian, and its most important present day rival in Germany, Neo-Kantianism.

It will be noted from this outline that the method of treatment is chronological and contrasts in this respect with the comparative Legal Philosophy of Miraglia on the topical scheme. The work of Berolzheimer should be read first as it gives a basis of criticism of the principles applied in the discussion by the topical method.

Not the least interesting part of the book is the discussion in the editorial introductions and the special introduction by the author of the different schools of philosophy and the fundamental concepts and methods of the philosophy of law. The American editor's account of the present day schools of philosophy puts very clearly before us Berolzheimer's philosophic belief and his relations to other leading schools of philosophic thought. It should be read in connection with Pound's discussion of the same topics (cf. 25 HARV. L. REV. 147-158 and 489-516). The English editor gives a very interesting resume of the practical results of the application by the Germans of the philosophic method to juristic problems.

Berolzheimer says in his preface that he proposes to emphasize practical rather than theoretical philosophy, and its chief question is, "what results does the philosopher find and what is the outcome and bearing of his conclusion?" 'In the development of law there is a foreground occupied by rhetorical accounts of the steps accomplished and the reforms proposed, and a more solid background of working forces that determine the real strength of the movement.' Investigation in the second field is the difficult task of the student of the philosophy of law. Illusion sometime serves a purpose in intellectual progress. The author defines illusion as an error that has proved conducive to intellectual progress and cites as an example that historically, political power, legal regulation, and customs were popularly conceived of as expressions of the divine will. As further instances of the power of such illusion he cites (p. 102) the doctrine of the "two swords" as typifying the important political issue of mediævalism and calls attention to the fact (p. 114) that while the deliberate purpose of the Reformation was the reform of religion its cultural mission was to vitalize individual freedom.

This work goes a long way toward realizing the hope expressed by the projectors of this series of translations; namely, that the study of the world's leading philosophies of law may have a practical issue in giving to us a basis upon which to reconstruct our system. The understanding of the

inner meaning of our political and legal illusions will go far toward putting us on the right course of legal betterment. Jhering's theory of law as a means to an end, that end being the protection of the interests of the individual by forces of society, might well be turned to a practical application by our own courts at the present time. Although Berolzheimer criticises this theory of Jhering as being philosophically inadequate (cf. p. 350) he substitutes for it a philosophic theory that is even more far reaching in its practical outcome; namely, that government law and morality are cultural forces (p. 351) and should be made to subserve practical ends. "If the philosophy of law is to be fruitful it must become a practical discipline; must provide norms of human action. The Hegelian view, as an expression of culture, must be supplemented by considering that the purpose of culture, including the cultural aspects of law and ethics, is to increase human efficiency." (p. 427).

This volume should be read first of the series by those who want an introduction to German legal thinking and philosophic phraseology. The style of the original is extraordinarily lucid and the translation is most admirable.

J. H. D.

A HISTORY OF ROMAN LAW, WITH A COMMENTARY ON THE INSTITUTES OF GAIUS and JUSTINIAN. By Andrew Stephenson, Ph.D., Professor of History in De Pauw University. Boston: Little, Brown, and Company, 1912, p. xviii, 513.

The author tells us in his preface that this volume is the outcome of a series of lectures given to advanced college students who were specializing in history. It is arranged on the ordinary plan of books of its class with the major portion (307 pages) devoted to the history of law and the remainder to an outline of the system of private law as given in the Institutes of Gaius and of Justinian. The historical part deals in the main with public law but gives short accounts of the institutions of the private law at the end of each period. The treatment of the system of private law seems somewhat meagre even for the needs of the student of history. It is not adequate for a beginner in the study of law. A useful bibliography is given in the list of authors cited and consulted. The modestly expressed hope of the author that the book may be found useful to students of history seems likely to be realized, though most professors of history would probably use it as collateral reading to their own courses of lectures.

J. H. D.

THE UPAS TREE. By Robert McMurdy, of the Chicago bar. F. J. Schulte & Company, Chicago and London, 1912. pp. 324.

It is no part of the business of this Review to comment upon novels in general, but this book, though in form a story, is written primarily as an argument against the infliction of capital punishment and it is therefore of interest to lawyers, especially in view of the present tendency to study and reform our criminal law. Capital punishment as a means of preventing crime is under fire. Several States during recent years, by constitutional provision,